

Attorney Docket No. 020111

REMARKS

Claims 12-13, 15, 17-26, 28-29, and 31-32 are currently pending in the application. Applicants thank the Examiner for allowance of claims 19-26, 28-29 and 31-32.

Rejections under 35 U.S.C. §103(a)

The Examiner has rejected claims 12, 13, 15, 17, and 18 under 35 U.S.C. §103(a) as being unpatentable over Sedonaris (US Patent No. 6,728,303). This rejection is respectfully traversed.

35 U.S.C. §103(c) states:

Subject matter developed by another person, which qualifies as prior art only under one of more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

The present application has a filing date of February 28,2002, prior to the issue date of the Sedonaris reference (April 27, 2004) and the prior publication date listed thereon (October 17, 2002). Thus, the Sedonaris reference can not qualify as prior art under 35 U.S.C. §102(a) or (b). Additionally, it is obvious from the face of the reference that it is not a 35 U.S.C. §102(c) or (d) reference. Thus, it may only be a reference under one or more of subsections (e), (f) and (g).

The Sedonaris reference and the present application were, at the time the invention covered by the present application was made, owned by, or subject to an obligation of assignment to the same person, namely Qualcomm. Both the Sedonaris reference and the present application have been so assigned and the present application was subject to such an assignment at the time of the invention. Thus, according to 35 U.S.C. §103(c) (and MPEP 706.02(1)(2)), the Sedonaris reference can not be used to preclude the patentability of the present application and is an improper reference. Withdrawal of the rejection of the remaining claims is respectfully requested.

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CONCLUSION

This case should now be in condition for allowance.

In light of the foregoing, the Examiner's reconsideration of this application with a view toward allowance is respectfully requested. The Examiner is invited to call the undersigned agent if a telephone call could help solve any remaining items.

Please charge any fees or overpayments that may be due with this response to Deposit Account No. 17-0026.

Respectfully submitted,

Dated: 5/19/05

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